by the appellant after the 'warning' has been given was inadmissible.

As regards the 2nd charge I am not prepared to agree that there was no evidence on which the learned president could probably have come to the conclusion that the appellant was not in possession of the still. The component parts of the still, i.e., the kuali and the vat were found in various parts of the premises. The appellant himself admitted ownership and possession of the two articles. The presumption of possession under section 17(3) of the Excise Act, 1961 would also be applicable. Also, except for the two minor items as the drainer and pipe, the kuali and vat would make a still for the manufacture of the liquor. Under section 17(1) of the Excise Act it is as much an offence for having in possession apparatus for distilling as for a complete still.

In the circumstances the appeal against conviction and sentence in respect of the first charge is allowed and the sentence set aside and any fine paid shall be refunded. The appeal against conviction and sentence in respect of the second charge is dismissed.

Order accordingly.

WONG YUK AI v. PUBLIC PROSECUTOR

[A.CrJ. (Lee Hun Hoe J.) February 3, 1966]

[Sibu — Criminal Appeal No. 1 of 1966]

Criminal Law and Procedure — Sentence — Accused already serving sentence — Whether sentences can be made concurrent — Criminal Procedure Code (Sarawak Cap. 58), s. 240.

The appellant had previously been convicted and sentenced. Subsequently he was charged with an offence under section 182 of the Penal Code and he was sentenced to six months imprisonment. The learned magistrate ordered the sentence to run concurrently with the sentence the appellant was serving.

Held: (1) in view of section 420 of the Criminal Procedure Code the sentence should have been made to commence immediately or at the expiration of the previous term of imprisonment;

(2) in this case the sentence should be varied to one of four months imprisonment from the date of conviction.

CRIMINAL APPEAL.

C. T. Wong for the appellant.

Frank Ngui (A.S.P.) for the respondent.

Lee Hun Hoe J.: This is an appeal against sentence. Appellant was convicted and sentenced to six months' imprisonment on his own plea for committing an offence under section 182 of the Penal Code. The sentence was to run concurrently with a sentence which appellant was serving.

Whether sentences imposed should run consecutively or concurrently is a matter for the discretion of the court but such discretion must be exercised judicially. It is not unusual for a court to direct sentences for two or more offences to run concurrently when the sentences are passed at one and the same trial.

In this case the appellant was already undergoing imprisonment and a subsequent sentence could commence only on the date of conviction or on the expiry of his imprisonment. It is not possible for the court to direct the subsequent sentence to run concurrently with the sentence which appellant was already serving, having been convicted at a different trial. This is obvious in the light of section 240 of the Criminal Procedure Code. I can only presume that the learned magistrate had inadvertently overlooked that section and that his attention had not been drawn to it at the time. This section reads:—

"240. — (1) When a person who is an escaped convict or is undergoing a sentence of imprisonment is sentenced to imprisonment, such imprisonment shall commence either immediately or at the expiration of the imprisonment to which he has been previously sentenced, as the court awarding the sentence may direct. A sentence of death shall be executed notwithstanding the pendency of any sentence of imprisonment.

(2) Nothing in subsection (1) shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Had there been no appeal and had the case come to my knowledge I would have to vary the term of the sentence in the exercise of my revisional power.

It was submitted that the maximum penalty for the offence is only "six months". This alone is not sufficient ground for saying that a deterrent sentence should not be imposed. In fact the maximum penalty is "imprisonment for six months, and a fine of one thousand dollars." Appellant had a previous conviction. It was also mentioned that this type of offence is rarely committed. This may be so. But this may be because people realise the seriousness of giving false information to police. Perhaps the fact that appellant admitted his guilt without qualification showed that he realised his wrong and regretted his folly and this may be regarded as a mitigating factor. He should have told the learned magistrate all the circumstances when invited to do so by the learned magistrate before sentence was passed. Nevertheless, by imposing a concurrent sentence the magistrate's intention was clearly to exercise leniency. It is difficult to know what sentence he would have imposed had the provisions of section 240 been brought to his attention.

In the circumstances I will err on the side of mercy and justice will be done if I allow the appeal by reducing the sentence to one of four months' imprisonment to run from the date of his conviction, that is, 4th January, 1966.

Appeal allowed. Sentence reduced.

SIAO BEE YEW v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.) March 4, 1966]

[Sibu — Criminal Appeal No. 2 of 1966]

Criminal Law and Procedure — Binding over — Necessity of complying with procedure — Criminal Procedure Code (Sarawak Cap. 58), ss. 70 - 78.

In this case the magistrate issued an order for the appellant to appear before him. When the appellant admitted quarrelling with another person, the magistrate ordered her to execute a bond to keep the peace and be of good behaviour for a period of six months. She appealed.

Held: the proceedings were irregular in this case and the order should be quashed.

Case referred to:—

(1) *Jong Chat* v. *Reg.* [1956] S.C.R. 13.

CRIMINAL APPEAL.

George Seah Kim Seng for the appellant.

Frank Ngui (A.S.P.) for the respondent.

Lee Hun Hoe J.: This is an appeal against the order of the Sibu Police Court dated 6th January, 1966.

Instead of issuing a summons an order was made directing the appellant to appear in the police court. The trial magistrate recorded that the appellant admitted that she was guilty of quarrelling with another person who was not even present in court. Thereupon the trial magistrate ordered appellant to execute a bond to keep the peace and be of good behaviour for a period of six months in her own surety of $50. It is against this order that appellant appealed.

Special procedure for cases of this nature can be found in the Criminal Procedure Code, particularly sections 70 to 78. A perusal of the record of the lower court indicates that the procedure was not complied with. No evidence was recorded by the trial magistrate. How could he bind appellant over unless he was satisfied on evidence that appellant was likely to commit a breach of the peace. I agree entirely with the following passage of the judgment of Bodley J. in *Jong Chat* v. *Regina* [1] at page 14:—

"As the exercise of magisterial powers under section 72 (now section 71) of the Criminal Procedure Code may well result in the interference with the liberty of the subject, these powers must be exercised strictly in accordance with the law."

Although there was no charge against the appellant it would appear she was asked to plead. There is no necessity for framing any charge but a proper inquiry should be held. The record does not show that the nature of the proceeding was explained to appellant.

In my view these irregularities are serious enough to occasion a failure of justice. I allow the appeal and quash the order of the lower court requiring the appellant to execute a bond. I order that the appellant be discharged.

Appeal allowed.

THAM KOK CHEONG & ANOR. v. LOW PUI HENG

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) March 16, 1966]

[K.L. — Federal Court Civil Appeal No. 97 of 1964]

Partnership — Sale by majority of partners to limited company — Whether binding on minority.

In this case there were four partners carrying on business. Three of the partners purported to sell the partnership business as a going concern to a limited company, formed by them. The fourth partner was not aware of what had taken place, until April 6, 1958, when she was informed by one of the other partners that the partnership business had been converted into a limited company and she no longer had any shares in the partnership business. She therefore commenced an action against the three partners and the limited company. At the trial it was held ([1965] 1 M.L.J. 212) that the acquisition and taking over of the partnership business was void and that the company should account to the plaintiff for her share in the partnership. The first and fourth defendants appealed against this decision.

Held: (1) as the plaintiff had not consented to the sale of the partnership business and was not aware of such sale till April 6, 1958, the purported sale of the business was ineffective and the partnership must be deemed to be in existence till April 6, 1958, when the plaintiff was informed of its dissolution;

(2) there must be a direction for accounts to ascertain the amount due as her share of the partnership to the plaintiff.

Case referred to:—

(1) *Chapple* v. *Cadell* 37 E.R. 953.

FEDERAL COURT.

S. D. K. Peddie for the appellants.

C. H. Smith (*T. K. Sen* with him) for the respondent.

Cur. Adv. Vult.

Tan Ah Tah F.J.: The plaintiff and the first, second and third defendants were partners in a firm which carried on business under the style of King Chong & Co. The fourth defendant is a company formed by the first, second and third defendants for the purpose of acquiring the partnership as a going concern.

The fourth defendant was incorporated on the 25th August 1953. At the first directors' meeting which was held on the 1st November 1953 it was resolved that the company should commence trading as from the 1st January 1954. The first, second and third defendants were the directors who attended this meeting. Three applications for shares, made by the directors themselves, were considered and 299 shares were allotted to each of them "as fully paid shares for a consideration other than cash," such allotment